

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate
and Refine Procurement Policies and
Consider Long-Term Procurement Plans

Rulemaking 10-05-006
(Filed May 6, 2010)

COMMUNITIES FOR A BETTER ENVIRONMENT
TRACKS I & III OPENING BRIEF

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Communities for a Better Environment (“CBE”) submits this Opening Brief regarding the Track I System Plans and Track III Rules.

INTRODUCTION

CBE has worked for decades in and with community members in low income communities of color to fight pollution. Communities where CBE organizes in the Los Angeles and Bay areas suffer disproportionately from the impacts of local and regional air pollution. In Southern California, CBE works with communities in Southeast Los Angeles and Wilmington where stationary industrial pollution sources exacerbate the impacts from goods movement and mobile sources from ports and the freeways that bisect these traditionally disempowered communities. Residents of these communities are predominantly low income people of color whose voice often is not heard by those who decide how much pollution they will breathe.

At the direction of its members, CBE works at the statewide level to ensure that new sources of energy are as clean and sustainable they can be, and to prevent new power plants from exacerbating existing environmental injustice. CBE’s members are increasingly concerned about the disproportionate impacts that global climate change will have on low-income communities of

color, and strongly object to the prospect of increasing our dependence on energy sources that emit greenhouse gases. Conversely, our members are committed to finding sustainable solutions, both to reduce the impacts of ongoing reliance on polluting and short-term energy sources, and to increase communities' self-reliance and local security.

SUMMARY OF ARGUMENT AND RECOMMENDATIONS

Regarding Track I, CBE is a party to the settlement agreement submitted on August 3, 2011. CBE recommends the Commission approve the proposed settlement. In so doing, CBE requests that the Commission specifically find that the evidence presented in this proceeding does not establish a need for new generation to integrate renewables. CBE further requests that the Commission specifically find that neither Pacific Gas and Electric ("PG&E) nor Southern California Edison ("SCE") have requested or established a need for new generation to meet local area need.

Regarding Track III refinements to bid evaluation process, CBE recommends that the Commission "refine" the bid evaluation process to ensure that every offer's environmental justice impacts are assessed accurately, and reflected in evaluation of the bid. All information on which the environmental justice score relies should be publicly available, so that affected communities can participate.

CBE recommends that the Commission adopt the Energy Division proposal to limit to one year or briefer the contracts utilities with once-through cooling facilities.

CBE recommends that the Commission reject utility requests to approve greenhouse gas product procurement. Until a legally-sound cap and trade regulation is adopted, Commission approval utility plans to spend ratepayer participating in a market is premature. The regulation is currently open for comment.

Finally, CBE recommends that the Commission reject SCE’s proposal to discuss, or open a new proceeding to discuss, establishing a CAISO-operated auction for new generation to address identified local area needs.

TRACK I SETTLEMENT

On August 3, 2011, CBE joined with many other parties to this proceeding in submitting a settlement agreement that addresses many of the Track I, System Plan issues CBE intended to address with respect to the IOUs that serve its members – SCE and PG&E. While the settlement agreement is not perfect, CBE compromised in order to achieve a negotiated outcome that should meet its members’ needs, the needs of the utilities, and the regulatory requirements this proceeding is intended to address.

TRACK III ISSUES

I. Refinements to Bid Evaluation Process

Track III issues to be discussed in this opening brief include parties’ identifications of necessary “refinements to the bid evaluation process”.¹ The bid evaluation process should be refined to address environmental justice impacts of utility contracts. In CBE’s experience, existing criteria for bid evaluation fail adequately to address the environmental justice implications of procurement contracts.²

CBE supports the recommendations advanced by Pacific Environment, both to include a uniform metric and assigned weight to environmental justice in the bid evaluation process, and to make the environmental justice scoring public information.³

¹ ALJ Ruling addressing Track 3 Issues, June 13, 2011.

² The Commission itself has observed that PG&E’s “environmental leadership” scoring was given these least weight of all factors, and its determination of that score lacked transparency. D.10-07-045, at p. 20; *see also* Ex. 505, p. 11 (Pacific Environment (Cox) testimony summarizing flaws identified.)

³ Ex. 505, pp. 12-14 (Pacific Environment, Cox.)

Transparency in the environmental scoring process is critical to public participation, especially in the communities most impacted by environmental injustice. The communities where CBE organizes are subjected to cumulative impacts of many pollution sources, in addition to social stressors such as high unemployment and poor housing and transit options. Many community members are monolingual Spanish speakers. CBE works to empower these communities by providing access to information and leadership development so that communities can self-advocate. Environmental leadership scoring is precisely the sort of issue on which the utilities (and the Commission) should seek input from these communities. That cannot occur if each individual must agree to keep confidential the bid information – community power relies on shared knowledge. Mandating that the entire environmental leadership evaluation process be public information would advance the goal of achieving environmental justice in bid evaluation.

II. Ongoing Procurement of Once-Through Cooling Resources

Parties are asked to address “procurement rules relating to once-through cooling issues”.⁴ CBE has long advocated around once-through cooling facilities on behalf of its members who are substance fishermen. We believe that given the Clean Water Act’s 316(b) mandate, and the California’s State Water Board once-through cooling policy, the Energy Division proposal to limit utility contracts with once-through cooling facilities to one year should be uncontroversial. Yet PG&E seeks a rule that would allow what it dubs intermediate-term contracts (“During the transition period and prior to their retrofit or retirement, OTC units should be allowed to compete in IOU RFO’s to sell capacity and energy without restriction.”)⁵

⁴ ALJ Ruling addressing Track 3 Issues, June 13, 2011.

⁵ Ex. 107 at p. 1-3 (PG&E, Monardi)

As explained above, existing evaluation of offers fails adequately to account for environmental justice impacts in general. Allowing ongoing reliance on OTC units is poor policy, contrary to the interests of CBE's members,⁶ and the public at large. Further, although the utilities claim the limitation would deprive them of a lowest-cost option, they do not adequately explain how they would address risk of stranded costs.⁷ The Energy Division proposal is the wiser approach to OTC contracting.

III. Procurement of Greenhouse Gas Products

Track III briefs are may address rules regarding “utility procurement of greenhouse gas related products”.⁸ The utilities seek approval of their plans, including approval to pass through cost of participating in a market for greenhouse gas trading credits.

It would be premature to authorize procurement of GHG products. The latest version of the Air Resources Board's cap and trade regulation is open for comment until September 27, 2011, and will not be finalized until October 20, 2011 at the earliest.⁹ Evaluation of proposals based on prior drafts of the regulation is premature. The Commission should not approve the premature proposals, but wait until a regulation is to judge utility plans.

IV. Procurement of New Generation through CAISO Auction

In its opening testimony, SCE appeared to seek establishment of a CAISO auction for local reliability generation capacity. In its reply testimony, however, SCE clarified that it was “not asking the Commission to adopt its proposal, but to begin a procedure to examine its

⁶ For example, poor environmental scores in evaluation of requests for offers are not necessarily given adequate weight to prevent contracts. *See* Ex. 606 at p. 5

⁷ PG&E assures that it would only enter into contracts for the transition period, (PG&E Reply, p.2) yet the Energy Division proposed language is not limited to the State Water Board OTC retirement schedule.

⁸ALJ Ruling addressing Track 3 Issues, June 13, 2011.

⁹<http://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm>.

merits...”¹⁰ CBE agrees with the flaws identified by TURN in a procurement auction before CAISO, as outlined in SCE’s testimony.¹¹

SCE contends that “it is not appropriate to recommend the rejection of SCE’s conceptual proposal at this time”¹² because it is simply proposing a new proceeding to consider the concept. If adopted in any form the concept would erect yet another barrier to community participation in procurement decisions that affect CBE and its members. Participation in procurement decisions before the Commission can be a challenge for communities, both because much of the information is considered confidential and because it is extremely technical. Moving procurement decisionmaking to yet another agency, one that is quasi-public and not set up to solicit public input, would erect an insurmountable barrier. The proposal to open a new proceeding to discuss the possibility of adopting this anti-democratic proposal should be rejected outright, as should any suggestion of establishing an auction before CAISO for local area generation needs.

Respectfully submitted,

September 16, 2011

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¹⁰ Ex. 215 (SCE Reply Testimony, p. 1 (Brady).)

¹¹ These include CAISO’s lack of dedicated staff or expertise in procurement decisionmaking, removal from the Commission of its authority over IOU procurement decisions. (Ex. 1504, pp.3-6 (Woodruff).)

¹² Ex. 215 (SCE Reply Testimony, p. 1 (Brady).)

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